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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,363	09/10/2003	Paul W. Daniels	910009.401C1	5494

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EXAMINER

PARKER, FREDERICK JOHN

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/660,363	Applicant(s) DANIELS ET AL	
	Examiner Frederick J. Parker	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 20-30 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 20-30 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                        |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 20-30 in the reply filed on 1/20/05 is acknowledged.

### ***Specification***

2. The disclosure is objected to because of the following informalities: information in the "Cross Reference to Related Applications" needs updating. Appropriate correction is required.
3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title is too generic.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1,26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 is vague and indefinite because in the “providing” step, the phrase “in vertical proximity of one another” does not clearly convey the relation between the plate and screen.
- Claim 26 is vague and indefinite because the term “manipulating” does not clearly convey the intended motion or activity of the screen, nor is the term clarified in view of Spec. page 9.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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9. Claims 20,22-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chitouras US 5290607 in view of Brody US 3798048.

Chitouras teaches substrates bearing an adhesive coating 34 are flock coated from a dispenser 40 comprising a high voltage powder supply which charges and propels the flock 42 into the adhesive layer, followed by their introduction into a chamber 46 for curing the adhesive (col. 4, 52-col. 5,2) (claim 28). The method is used for modifying the sole and heel of footwear by applying flock to selected areas thereof to improve comfort of the wearer. Specifics of the electrostatic process are not disclosed.

Brody teaches a method for electrostatically applying oriented flock fibers onto an adhesive coated substrate, without limitation as to substrate. As shown in figure 1, adhesive coated articles 14 are moved on grounded 38 conveyor 52 driven by rollers 54. Flock container 16 on tracks 26 allow oscillation ("sifting device, per claims 22,25), and is necessarily driven by a motor or a functionally equivalent means, to facilitate discharge of flock through screen 24 surrounded by insulating frame 32 (per claim 26). Flock falls into zone 18 where it travels through previously electrostatically charged screen 32 (per claim 23) to provide an electrostatic field which, in combination with gravity assist, aligns and orthogonally implants the charged flock into the coated article 14, per claims 24,27 (see col. 1, 55- col. 2,11; col. 2, 60- col. 3, 64). The method provides a uniform aligned flock coating on the article.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to electrostatically apply flock to the shoe soles of Chitouras using the specific flocking process of Brody to provide uniform, aligned flock coatings on shoe soles to provide greater comfort to the wearer.

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10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chitouras US 5290607 in view of Brody US 3798048 and further in view of Johnson US 4899411.

Chitouras and Brody are cited for the same reasons previously discussed, which are incorporated herein. Masking is not cited.

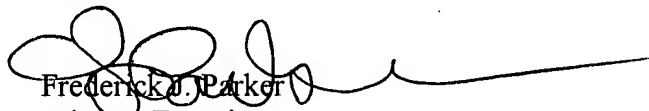
Johnson teaches electrostatically flocking selective adhesive-coated portions of footwear to apply rayon fibers using “conventional” electrostatic flocking machines (col. 2, 1-6), followed by heat curing. On col. 4, 7-11, is taught the concept of using a mask to allow flocking of selective portions of the adhesive-coated footwear substrate. Since Chitouras explicitly teaches application of flock to “selective areas, such as the toe and heel areas” (col. 8, 8-9) of a sole, and masks are conventional and well-known in the coating art to allow coating of selective areas, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chitouras in view of Brody by incorporating the concept of masking portions of the shoe article as disclosed by Johnson to allow application of oriented flock to only specific portions of the shoe sole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick J. Parker whose telephone number is 571/ 272-1426. The examiner can normally be reached on Mon-Thur. 6:15am -3:45pm, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Timothy Meeks can be reached on 571/272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Frederick J. Parker  
Primary Examiner  
Art Unit 1762

fjp